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8 UNITED STATES BANKRUPTCY COURT

9 DISTRICT OF NEVADA

10 In re:) Case No. 21-11271-abl
11 MEDOLAC LABORATORIES)
12 A PUBLIC BENEFIT CORPORATION,) Chapter 7
13 Debtor.) Hearing Date: OST
14) Hearing Time: OST
15)

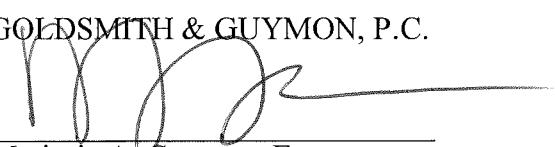
16 **MOTION TO WITHDRAW PROOF OF CLAIM**

17 COMES NOW, PROLACTA BIOSCIENCE, INC. ("Prolacta"), by and through
18 counsel, Goldsmith & Guymon, P.C., and hereby files the instant Motion to Withdraw Proof
19 of Claim ("the Motion"). This Motion is based upon Federal Rule of Bankruptcy Procedure
20 Rule 3006.

21 This Motion is supported by the following Memorandum of Points and Authorities,
22 as well as the pleadings and papers on file herein, and the oral argument of counsel upon
23 hearing.

24 DATED this 23 day of July, 2021.

25 **GOLDSMITH & GUYMON, P.C.**

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MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTUAL SUMMARY

A. Background

4. 1. Medolac Laboratories, a Public Benefit Corporation (“Debtor”) filed its’ Voluntary
5 Petition for Bankruptcy with this Court on March 17, 2021. *See* ECF No. 1.

6. 2. Prolacta filed its Motion for Relief from the Automatic Stay (“Motion for Relief”) on
7 April 7, 2021. *See* ECF No. 66. The matter was heard on May 26, 2021 and granted
8 on June 4, 2021. *See* ECF No. 213.

9. 3. Debtor attempted to achieve confirmation of a Subchapter V Chapter 11
10 reorganization plan that would effectively wipe out Prolacta’s intellectual property
11 claims asserted in its’ State Court Case (Superior Court, Orange County, California,
12 Case No. 30-2015-00767116-CU-NP-CJC).

13. 3. Because the only way to prevent the Debtor from successfully confirmation a Chapter
14 11 Plan was to file an objection, Prolacta filed a proof of claim on May 26, 2021.¹ Therein,
15 Prolacta estimated its’ monetary damages resulting from Debtor’s theft of
16 intellectual property at \$18,000,000.00. Attached to the proof of claim is an explicit
17 disclaimer outlining Prolacta’s preservation of rights to a jury trial per this Court’s lift
18 stay order. More specifically, the declaration states “The filing of this Creditor’s
19 Claim does not waive Prolacta Bioscience, Inc.’s right to a jury trial nor does it
20 subject Prolacta Bioscience, Inc. to the jurisdiction of the Bankruptcy Court as it
21 relates to its’ claims for relief set forth in its’ state court lawsuit, pursuant to the relief
22 from stay granted and ordered by the Honorable Chief Judge Landis on May 26, 2021
23 at 2:30 P[.]M.”

24. 4. After hearing Prolacta’s Motion to Dismiss and the Objection to Debtor’s Plan, this
25 Court converted Debtor to a Chapter 7 bankruptcy on July 7, 2021. *See* ECF 237.

26. 5. The preservation of Prolacta’s intellectual property rights remain its’ top priority. It

¹ ECF No. 174, Claim No. 28-1.

1 is clear that Debtor's bankruptcy estate is minimal, excluding Prolacta's intellectual
2 property since it was Prolacta's SOPs, fortifier, and customer lists from which Debtor
3 derived its' product.

8 7. Prolacta's sole desire is to obtain confirmation from a jury in the State Court Case that
9 Medolac and the other named defendants stole its intellectual property, require its
10 return, and receive an injunction against the defendants from selling or utilizing its'
11 assets.

II. LEGAL ARGUMENT

13 A. Prolacta should be allowed to withdraw its' proof of claim with such terms and conditions as this Court deems proper.

15 Any creditor can withdraw a claim as of right by filing a notice of withdrawal unless
16 certain circumstances exist. Federal Rule of Bankruptcy Procedure 3006. If a creditor has
17 rejected a debtor's plan or otherwise significantly participated in a case, then the creditor
18 must file a motion to withdraw its' proof of claim. *Id.* Upon a hearing noticed to the trustee
19 the court may allow a creditor to withdraw its' proof of claim. *Id.* The Court must lay out
20 terms and conditions that it sees proper. *Id.* While this Court may order otherwise, an allowed
21 withdrawal ordinarily constitutes withdrawal of any plan rejections. *Id.*

22 A motion for leave to withdraw a claim under Bankruptcy Rule 3006 is governed by
23 FRCP 41(a) considerations. *In re 20/20 Sport, Inc.*, 200 B.R. 972, 979 (Bankr. S.D.N.Y.
24 1996) (*citing* Advisory Committee Note to Bankruptcy Rule 3006). The accompanying
25 Federal Rule of Civil Procedure governs dismissal of actions by a plaintiff in a civil suit.

1 Voluntary dismissal under FRCP 41(a)(2) is within the court's discretion and thus, the court
2 has the power to weigh the equities and do justice in the case. *Id.* Thus, in ruling on such a
3 motion, the court's discretion is to be exercised with due regard to the legitimate interests of
4 both the plaintiff and the defendant. *Id.* While the rule is to allow a plaintiff to dismiss an
5 action without prejudice to future litigation, the dismissal must not unfairly prejudice the
6 defendant's interests. *Id.* The 9th Circuit has held that legal prejudice is not satisfied by the
7 inconvenience of facing a second lawsuit, loss of choice of forum, loss of a tactical
8 advantage, and dismissal at an early stage of the proceeding. *Id.* Factors pertinent to a Rule
9 41 prejudice analysis include: diligence in pursuing withdrawal of the claim, undue
10 vexatiousness, the extent the [claim] has ‘progressed,’ duplication of litigation expense,
11 explanation of the need to withdraw, delay in prosecution of the [claim], prejudice to others
12 and the importance of the claim to the reorganization effort.”*Id.*

13 Prolacta objected to Debtor’s plan of confirmation. Prolacta participated significantly
14 in Debtor’s bankruptcy matter to protect its’ intellectual property interests, a legitimate
15 interest. Those interests are the subject of its’ State Court Case which seeks to enforce its’
16 intellectual property rights against Debtor. Prolacta’s interest to continue the State Court Case
17 against Debtor and withdraw its’ proof of claim must not unfairly prejudice Debtor’s
18 interests. The fact that facing the State Court Case would be “inconvenient” for Debtor does
19 not rise to the level of unfair prejudice per the 9th Circuit. Prolacta has remained diligent in
20 its’ actions to protect and continue working to enforce its’ intellectual property rights. It has
21 participated appropriately in Debtor’s bankruptcy matter, preserved its’ intellectual property
22 rights by way of attachment to its’ proof of claim, and achieved an order to lift stay to allow
23 it to proceed against Debtor in the State Court Case.

24 Prolacta files this Motion in light of the fact that it no longer needs standing to oppose
25 Debtor’s plan. Prolacta’s State Court Case does not exhibit undue vexatiousness as it is a
26 necessary lawsuit brought to ensure justice is achieved in its’ rightful preservation and
27 enforcement of intellectual property rights. The State Court Case’s progress was paused due
28 to the COVID-19 crisis. However, it was near completion prior to the pause and has

1 continued since this Court's order lifting stay. There is a status hearing scheduled for June
 2 26, 2021. Currently, Debtor Weir requested the status hearing be moved to August.

3 Debtor's Chapter 7 trustee, Brian D. Shapiro, Esq., has filed a Motion to Reinstate the
 4 Stay as to Prolacta (ECF 260) and therein argues that Prolacta submitted to this Court's
 5 jurisdiction by filing a proof of claim and should not be allowed to enforce its' right to a jury
 6 trial as to the status of the intellectual property by continuing its State Court Case. This
 7 argument should not succeed, as Prolacta would be unduly prejudiced. This issue must be
 8 decided—the best forum is the California Superior Court where the case has resided for over
 9 six (6) years and where a jury was paneled for three (3) weeks.

10 The Trustee seeks to bar Prolacta from proving that its' intellectual property was
 11 stolen by Debtor. The Trustee wants to preserve the right to retain power over all claims
 12 Debtor may have against Prolacta. The result would be to utilize the bankruptcy code in a
 13 way that prevents justice and allows Debtor to effectively steal Prolacta's intellectual
 14 property and prevent it from achieving any due remedy. A motivation of theft cannot stand
 15 as a viable reason to disallow Prolacta from withdrawing its' proof of claim.

16 This Court should allow Prolacta to withdraw its' proof of claim as being no longer
 17 necessary because the interests of equity support it and Debtor would not suffer undue
 18 prejudice.

19 **III. CONCLUSION**

20 Prolacta respectfully requests this Court grant its' Motion to Withdraw Proof of
 21 Claim pursuant to Federal Rule of Bankruptcy Procedure 3006.

22 DATED: July 23, 2021.

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